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SETTLEMENT AGREEMENT AND RELEASE

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Via Certified Mail - Return Receipt Requested

March 7, 2016

Richard Norwood
Citizen Suit Coordinator
U.S. Department of Justice
Environment and Natural Resource Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION
16 MAR 11 P1:39

Re: *California River Watch, an IRC Section 501(c)(3), non-profit, public benefit corporation v. County of Mendocino, et al*
USDC Case No.: 4:15-cv-03263 YGR

Dear Mr. Norwood:

Enclosed please find a fully executed Settlement Agreement and Release ("Agreement") by the parties to the above-referenced action. This Agreement is being served pursuant to § 505(c)(3) of the federal Clean Water Act, 33 U.S.C. § 1365(c)(3), for agency review and comment, where appropriate, within 45 days of service hereof.

Very truly yours,


Jack Silver

JS:lhm

Enclosure

cc: Rebecca L. Chenoweth, Esq.
Katharine L. Elliot, Mendocino Acting County Counsel
Stephen F. Johnson, Esq.
Gregory j. Patterson, Esq.
Samantha W. Zutler, Esq.
Jack Silver, Esq.

DOS AGREEMENT # 16.004

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement"), effective as of the last date of execution below ("Effective Date"), is made by and between California River Watch, a nonprofit corporation, on behalf of itself and its members ("CRW"), and the County of Mendocino, Solid Waste of Willits, Inc., and the City of Fort Bragg ("Owners and Operators"). CRW and the Owners and Operators are sometimes hereinafter each referred to as a "Party" or collectively as the "Parties."

RECITALS

A. California River Watch is a 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, dedicated to protect, enhance, and help restore the surface waters and groundwater including all rivers, creeks, streams, wetlands, vernal pools and tributaries of California.

B. The County of Mendocino and the City of Fort Bragg, under a Joint Powers Agreement, are the owners, and Solid Waste of Willits, Inc. is the operator, of the Caspar Transfer Station located at 15000 Prairie Way in the City of Mendocino, California ("Site"). The Site is subject to various federal and state regulatory requirements under the federal Clean Water Act ("CWA"), including compliance with the State Water Resource Control Board's General Industrial Activities Storm Water Permit ("General Permit").

C. On March 24, 2015, CRW served the Parties with a 60-Day Notice of Violations and Intent to File Suit ("Notice Letter") alleging various violations of the CWA relating to activities at the Site. On July 14, 2015, CRW filed suit in this matter, *California River Watch v. County of Mendocino, et al.*, USDC Northern Dist., Case No. C-15-3263-YGR ("CRW Complaint").

D. The Owners and Operators deny all of CRW's allegations that it is liable to CRW for any claims that were, or could have been asserted against the Owners and Operators based upon the Notice Letter and/or the CRW Complaint.

E. The Parties have expended effort and resources in investigating and evaluating allegations and claims set forth in the Notice Letter and the CRW Complaint, including the exchange of information regarding the Site, conducting a site visit, as well as engaging in a negotiation and technical dialogue regarding settlement.

F. The Parties now wish to resolve and settle all disputes, obligations, and purported or actual claims or causes of action, which may exist by and between CRW and the Owners and Operators, including without limitation any disputes, obligations, claims and/or causes of action that were or could have been asserted in or pursuant to the Notice Letter.

NOW, THEREFORE, in consideration of the execution of this Agreement and the releases, satisfactions and promises made herein, it is hereby agreed upon by the Parties as follows:

TERMS AND CONDITIONS

1. Parties Bound By This Agreement and Length of Agreement. This Agreement, and each of its provisions, including all representations, warranties, and promises contained herein, binds, and inures to the benefit of CRW and the Owners and Operators, and each of their respective assigns, present and future affiliates, parents, subsidiaries, predecessors and successors in interest whether by merger, consolidation, or otherwise, as well as their respective representatives, agents, and administrators, past, present, and future. The "Termination Date" of this Agreement is the date that all of the requirements under Sections 2 and 3 are finished by The Owners and Operators.

2. Actions by the Owners and Operators. In exchange for the delivery, execution, and performance of this Agreement and of the Release by CRW as provided herein, the Owners and Operators shall perform the below specified projects. The Owners and Operators reserve the right, in its sole discretion, to determine (i) which persons shall perform any work described herein, including contractors; and (ii) the scope and technical details of, and manner to implement, any such work, subject to review and approval by the Regional Water Quality Control Board (or such other regulatory agency as may, from time to time, exercise jurisdiction with respect to environmental matters at the Site):

2.1. Implement Storm Water Pollution Prevention Plan ("SWPPP") Best Management Practices ("BMPs").

- Implement fully, update and keep current, the Site's SWPPP, dated June 15, 2015, ensuring it is and remains consistent with the requirements of the new General Permit (Water Quality Order 2014-0057-DWQ); and
- Continue to implement and update as needed the following good housekeeping measures in accordance the General Permit and 3.1.1 of the SWPPP.

2.2. Submission of Existing Reports to CRW. To the extent that annual or other existing required monitoring reports are not otherwise uploaded to and made available on the Regional Water Quality Control Board's storm water database, the Owners and Operators agree to provide CRW with a copy of any reports concerning matters addressed in this Agreement upon request. The Owners and Operators may furnish copies of any such reports to CRW in either hard copy or digital form.

2.3. Site Visit. CRW shall conduct one (1) site visit of the Site within one (1) year after the Effective Date of this Agreement to review BMPs designed to ensure compliance with the

General Permit and implemented at the site. The CRW shall give the Owners and Operators seventy-two (72) hours advanced notice of its intent to conduct the site visit.

3. Actions by CRW and Payment of Fees and Costs by the County of Mendocino and the City of Fort Bragg. In exchange for the delivery, execution, and performance of this Agreement, CRW and the County of Mendocino and the City of Fort Bragg shall perform the following:

3.1. Submittal of Agreement to DOJ. Within five (5) business days after the Effective Date of this Agreement, CRW shall provide the Federal District Court for the Northern District of California in Case No. 4:15-cv-03263 YGR with a Notice of Settlement, and shall submit this Agreement to the United States Department of Justice ("DOJ") for the statutory 45-day agency review period set forth in 33 U.S.C. ' 1365(c).

3.2. Filing Notice of Dismissal with Court. Within five (5) business days after the expiration of the DOJ review period discussed in Section 3.1, CRW shall file with the Federal District Court a Notice of Dismissal whereby the Complaint and all claims therein shall be dismissed with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

3.3 Fees and Costs. Within five (5) business days after the filing with the federal District Court the Notice of Dismissal discussed in Section 3.2, the County of Mendocino and the City of Fort Bragg shall pay CRW the total sum of Twenty-Five Thousand Dollars (\$25,000.00), with the County of Mendocino paying two-thirds (2/3) and the City of Fort Bragg paying one-third (1/3) of this amount, as full reimbursement for CRW's investigative and attorneys' fees and costs. Payment shall be made by check to "California River Watch" and mailed to the Law Office of Jack Silver, P.O. Box 5469, Santa Rosa, CA 95402-5469. Payment shall constitute full and complete satisfaction of any and all claims by CRW for attorneys' fees and costs in connection with this matter up to and including the Effective Date.

4. Mutual Release. It is the intent of the Parties that the execution and delivery of this Agreement constitutes a full and complete satisfaction of all rights, claims and demands by CRW against the Owners and Operators, and the Owners and Operators against CRW, with respect to any and all allegations and claims made in the Notice Letter under the Clean Water Act. CRW and the Owners and Operators, on behalf of itself and any and all of its agents, representatives, successors, members, and assigns, does hereby absolutely, fully, and forever release, relieve, remise, and discharge the Owners and Operators and CRW, respectively, and its past and present employees, officers, directors, attorneys, and the predecessors, successors, and assigns of any of them, from any and all causes of action, claims, damages (including punitive damages), demands, debts, actions, attorneys' fees, costs of suit, and liabilities of every kind or nature whatsoever, arising out of claims asserted in the Notice Letter under the Clean Water Act concerning the Site. The release provided for herein shall be valid and effective whether the claims, causes of action, or liability hereby released (i) were known or unknown, suspected or unsuspected, (ii) were based in contract, tort,

statute, or otherwise, or (iii) arise at law or in equity. This release shall survive the termination of this Agreement, whether by satisfaction of the terms and conditions hereof or operation of law.

Further, the parties acknowledge that they are familiar with Section 1542 of the California Civil Code. For any other claims against each other, known or unknown, suspected or unsuspected, and each party expressly waives and relinquishes any rights and benefits which they have or may have under Section 1542 of the Civil Code of the State of California, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties acknowledge that each has specifically reviewed with its attorney the meaning and effect of the release set forth herein, the language of California Civil Code Section 1542, and the waiver contained herein. The Parties acknowledge that their attorneys have fully explained the impact of these provisions, and the Parties knowingly accept the risks associated with these provisions.

5. No Admission. This Agreement is the direct result of a compromise of disputed allegations and claims. As such, this Agreement shall not, for any purpose, be considered as an admission of liability by the Owners and Operators, nor shall the payment of any sum of money in consideration for the execution of this Agreement constitute or be construed as an admission of any liability by the Owners and Operators, which expressly denies any such liability or wrongdoing.

6. Delays in Schedule Implementation. In the event implementation by the Owners and Operators of the remedial measures set forth in Section 2 of this Agreement does not occur by the agreed to dates, despite the timely good faith efforts of the Owners and Operators to acquire any necessary approvals and/or permits, or due to factors unforeseen at the time this Agreement was entered into, the Owners and Operators agree to notify CRW in writing as soon as practicable after the anticipated delay becomes apparent, and in any case except in a case of force majeure described below, not less than twenty (20) days prior to any deadline set forth in Section 2, and shall describe the reasons for the anticipated delay.

7. Force Majeure. The Owners and Operators shall not be deemed in default or breach of this Agreement by reason of any event which constitutes a force majeure. For purposes of this Agreement, a force majeure is defined as any event arising from causes beyond the reasonable control of the Owners and Operators or its contractors that delay or prevents performance. This includes, without limitation, acts of God, acts of war, acts of terrorism, fire, explosion, extraordinary weather events, restraint by court order or public authority, or other causes beyond the Owners and Operators' reasonable control. Neither increased costs nor economic hardship shall constitute a force majeure.

8. Breach of Agreement and Dispute Resolution. Any disputes between CRW and the Owners and Operators concerning any alleged breach of this Agreement shall be subject to the following dispute resolution procedures. Failure to satisfy the payment condition in Section 3 is a substantial breach of this Agreement and relieves CRW of its obligations under this Agreement.

8.1. Good Faith Negotiations. CRW and the Owners and Operators shall make good faith efforts to resolve informally any alleged breach of the Agreement. If informal efforts to resolve the alleged breach are unsuccessful, that Party shall provide written notice of the alleged breach and that Party's intent to initiate the dispute resolution procedure of this Section 8. The notice shall include a recitation of all facts and circumstances giving rise to the dispute, including the particular provisions of the Agreement alleged to have been breached.

8.2. Mediation. If the dispute is not resolved by the Parties within thirty (30) days after such notice is given, such dispute shall be submitted to mediation before a mutually agreeable neutral mediator. The Parties shall each bear their own costs and attorney's fees incurred in connection with such mediation.

8.3. Waiver. By agreeing to these dispute resolution provisions, the Parties understand that they are waiving certain important rights and protections that otherwise may have been available to each of them if a dispute between them were determined by a judicial action including, without limitation, the right to a jury trial, and certain rights of appeal. Other than the remedies contained within this Agreement including dispute resolution and specific performance of the terms of this Agreement, there are no other remedies. The Parties specifically agree that there is no basis within this Agreement or within the contemplation of the Parties to support a claim for consequential damages due to any form of breach.

9. Notices. All notices, consents, approvals, requests, demands and other communications (collectively, "Notice") which the Parties are required or desire to serve upon or deliver to the other Party shall be in writing and shall be given by nationally- recognized overnight courier, by certified United States mail, return receipt requested, postage prepaid, addressed as set forth below, or by facsimile or electronic mail addressed as set forth below:

If to CRW:

Jack Silver, Esq.
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel: (707) 528-8175
Email: lhm28843@sbcglobal.net

**If to the Owners
and Operators:**

Mendocino County

Rebecca L. Chenoweth, Esq.
Office of the County Counsel
County of Mendocino
501 Low Gap Road / Room 1030
Ukiah, CA 95482
Tel: (707) 234-6885
Email: chenowethr@co.mendocino.ca.us

Director
Department of Transportation
County of Mendocino
340 Lake Mendocino Drive
Ukiah, CA 95482
Tel: (707) 463-4363

City of Fort Bragg

Samantha W. Zutler, Esq.
City Attorney for City of Fort Bragg
Burke, Williams & Sorensen, LLP
101 Howard Street / Suite 400
San Francisco, CA 94105
Tel: (415) 655-8113
Email: SZutler@bwslaw.com

Copy all correspondence to:

City Manager
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA. 95437

Solid Waste of Willits, Inc.

Stephen F. Johnson, Esq.
Mannon, King and Johnson
200 North School Street / Suite 304
Post Office Box 419
Ukiah, CA 95482
Tel: (707) 468-9151
Email: steve@mkjlex.com

Solid Waste of Willits, Inc.
P.O. Box 1425
Willits, CA 95490

The foregoing addresses may be changed by Notice given in accordance with this Section 8. Any Notice sent by mail shall be deemed received two (2) days after the date of mailing. Any Notice sent by facsimile shall be deemed received upon electronic confirmation of the successful transmission thereof, and any Notice sent by electronic mail shall be deemed received upon electronic transmission thereof provided sender does not receive electronic notice of non-delivery. Any Notice sent by overnight courier service shall be deemed received on the day of actual delivery as shown by the confirmation of delivery by the messenger or courier service. If the date of receipt of any Notice to be given hereunder falls on a weekend or legal holiday, then such date of receipt shall automatically be deemed extended to the next business day immediately following such weekend or holiday for purposes of calculating time periods commencing upon the date of service.

10. Attorneys' Fees. Other than the payment to CRW under Section 3 each Party shall bear its own past and future attorneys' fees and costs relating to the subject matter of this Agreement.

11. Parties' Acknowledgment of Terms. This Agreement has been carefully and fully read and reviewed by CRW, the Owners and Operators, and their respective counsel, if any, who hereby represent that the contents of this Agreement are understood, and agree that this Agreement is binding on each Party or its respective predecessors, successors, and assigns and as described above.

12. Interpretation and Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the United States and the State of California without regard to principles of conflicts of law. This Agreement shall be interpreted and construed as a whole, according to its fair meaning and not strictly for or against any Party, and without regard to which Party drafted the Agreement. All of the promises, representations, and warranties contained in this Agreement survive the execution of this Agreement.

13. No Assignments. Each Party to this Agreement represents and warrants that it has not assigned, transferred, hypothecated, or sold to any third person or entity, any of the rights or obligations released by or entered into under this Agreement.

14. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall evidence one and the same agreement.

15. Headings. The headings used in this Agreement are for convenience of reference and shall not be used to define any provision.

16. Entire Agreement In Writing. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter set forth herein and supersedes all previous or contemporaneous negotiations, commitments (oral or written), and writings with respect to the subject matter set forth herein.

17. Modification or Amendment. This Agreement or any of its provisions may be modified or amended only by written agreement executed by all Parties to this Agreement.

18. Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision. If, in any action before any court or other tribunal of competent jurisdiction, any term, restriction, covenant, or promise is held to be unenforceable for any reason, then such term, restriction, covenant, or promise shall be deemed modified to the extent necessary to make it enforceable by such court or other tribunal and, if it cannot be so modified, that this Agreement shall be deemed amended to delete here from such provision or portion adjudicated to be invalid or unenforceable, and the remainder of this Agreement shall be deemed to be in full force and effect as so modified. Any such modification or amendment in any event shall apply only with respect to the operation of this Agreement in the particular jurisdiction in which such adjudication is made.

19. Representations and Warranties. This Agreement is given voluntarily, free of undue influence, coercion, duress, menace, or fraud of any kind. No Party, nor any officer, agent, employee, representative, or attorney of or for any Party, has made any statement or representation to any other Party regarding any fact relied upon in entering this Agreement, and no Party is relying upon any statement, representation, or promise of any other Party, nor of any officer, agent, employee, representative, or attorney of or for any Party, in executing this Agreement or in making the settlement provided herein, except as expressly stated in this Agreement.

20. No Third Party Beneficiaries. This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever. Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.

21. Authority. Each of the persons signing this Agreement on behalf of an entity represents and warrants that he or she has actual authority and capacity to execute this Agreement on behalf of the entity and to bind it to all of the terms of this Agreement.


IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

THE COUNTY OF MENDOCINO

By: 

Dated: **MAR - 1 2016**

THE CITY OF FORT BRAGG

By: 

Dated: **2/8/16**

SOLID WASTE OF WILLITS, INC.

By: _____

Dated: _____

CALIFORNIA RIVER WATCH

By: _____

Larry Hanson
Board President

Dated: _____

I hereby certify that according to the provisions of Government Code sections 25103, delivery of this document has been made.

CARMEL J ANGELO

Clerk of the Board

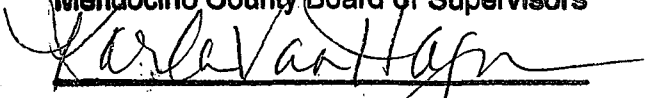
By: 

Deputy

ATTEST:

Carmel J. Angelo, Clerk of the Board

Mendocino County Board of Supervisors



DEPUTY

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

THE COUNTY OF MENDOCINO

By: _____

Dated:

THE CITY OF FORT BRAGG

By: _____

Dated:

SOLID WASTE OF WILLITS, INC.

By: _____

Dated:

CALIFORNIA RIVER WATCH

By: 
Larry Hanson
Board President

Dated:

12/16/2015

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

THE COUNTY OF MENDOCINO

By: _____

Dated:

THE CITY OF FORT BRAGG

By: _____

Dated:

SOLID WASTE OF WILLITS, INC.

By: A. W. Hanson

Dated: 2.4.16

CALIFORNIA RIVER WATCH

By: _____

Larry Hanson
Board President

Dated:

Law Office of Jack Silver
P. O Box 5469
Santa Rosa, CA 95402-5469

CERTIFIED MAIL™



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Richard Norwood
Citizen Suit Coordinator
U.S. Department of Justice
Environment and Natural Resource Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

FROM: LAW OFFICE OF JACK SILVER
CARR: United States Postal Service
TRK#: 9000081533
RCVD: 3/11/2016 1321

TO: Reed, Jason
PH: 202/353/7550
BDG: PHB
RM: 2121
PCS: 1



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RTE:
ASC:
Reed, Jason